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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re BARBARA S., a Person Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

CURTIS S.,

Defendant and Appellant.

D043411

(Super. Ct. No. J513572D)

APPEAL from an order of the Superior Court of San Diego County, Gary
M. Bubis, Referee. Reversed with directions.

Curtis S. appeals an order declaring his daughter, Barbara S., to be a dependent of
the court and removing her from his custody under Welfare and Institutions Code

sections 360 and 361.¹ In his opening brief, Curtis asserted reversal was necessary because sufficient notice was not provided to the Bureau of Indian Affairs (the BIA) or any Indian tribe under the Indian Child Welfare Act (the ICWA). However, since that brief was filed, counsel for Curtis, Barbara, and the San Diego County Health and Human Services Agency (the Agency) filed a joint stipulation for reversal on the grounds that the record does not show notice under the ICWA was given. The parties seek reversal of the court's order, remand for the juvenile court to direct the Agency to notice the relevant tribes and the BIA, reinstatement of the order should no tribe intervene, and immediate issuance of the remittitur. We accept the stipulation, reverse, and order an immediate remittitur.

FACTUAL AND PROCEDURAL BACKGROUND

In September 2003, the Agency removed newborn Barbara from the custody of her mother, Vanessa M., and filed a section 300 petition on the child's behalf. The petition alleged Barbara was at risk because Vanessa used dangerous drugs, tested positive for drugs at the time of Barbara's birth, had failed to complete prior drug rehabilitation programs, had failed to reunify with three other children, and had received no prenatal care.

In the detention report, the social worker indicated the ICWA did not apply, presumably based on information learned during a previous dependency case involving

¹ All statutory references are to the Welfare and Institutions Code unless otherwise specified.

one of Vanessa's children. During the earlier case, a social worker learned Vanessa had some Indian heritage, although no member of her family was enrolled in or affiliated with an Indian tribe. The social worker in that case contacted several tribes, unidentified in this record, regarding possible tribal affiliation. Although the record does not so indicate, we infer no tribe chose to intervene. Based on those facts, it appears the social worker in this matter did not send notice to the BIA that a dependency proceeding on Barbara's behalf had begun. At the detention hearing, the court found the ICWA did not apply.

In October 2003, the court made a true finding on the petition. The next month, the court declared Barbara to be a dependent, removed her from Vanessa's custody, and ordered reunification services for Curtis. Curtis filed a timely notice of appeal in December.

In March 2004, counsel for Curtis, Barbara, and the Agency filed a joint stipulation for reversal of the order. The parties stipulated notice was not given in compliance with the ICWA. All parties agreed notice was necessary and asked this court to reverse the order to secure compliance with the ICWA.

DISCUSSION

The parties seek a stipulated reversal on the grounds that there was no compliance with the notice provisions of the ICWA. Our independent review of the record, as discussed above, shows a stipulated reversal is appropriate.

This court may reverse the judgment upon a stipulation of the parties when:

"(A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal. [¶] (B) The reasons of the parties for requesting reversal

outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement." (Code Civ. Proc., § 128, subd. (a)(8).)

Stipulated reversals have occurred in juvenile dependency proceedings. (*In re Rashad H.* (2000) 78 Cal.App.4th 376, 380.)

There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal. The only nonparties that might be affected are Vanessa and the Indian tribe to which Barbara may belong. Vanessa is not affected by the reversal and may benefit should an Indian tribe choose to intervene because her parental rights might remain intact. The unidentified tribe to which Barbara may belong would clearly benefit should Barbara be an Indian child; Congress has declared "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children." (25 U.S.C. § 1901(3).) Likewise, the public benefits because Congress has declared it is a national policy to protect the best interests of Indian children. (25 U.S.C. § 1902.)

The reasons for requesting reversal also outweigh the possible erosion of public trust. The United States has a national policy to protect the best interests of Indian children and to promote the stability and security of Indian tribes by establishing minimum standards for the removal of Indian children from their families. (25 U.S.C. § 1902.) The public trust is served when this policy is followed.

Moreover, because Barbara might be an Indian child, the social worker had to send notice to the BIA of the proceedings. (*Dwayne P. v. Superior Court* (2002) 103

Cal.App.4th 247, 254-258; 25 U.S.C. § 1912(a).) The failure to do so constitutes reversible error. (*Dwayne P. v. Superior Court, supra*, 103 Cal.App.4th at p. 258.) When reversible error has occurred, using the stipulated reversal procedure advances the public trust because in that circumstance, the public may be assured the courts and parties will act promptly and reasonably to address situations where reversal was necessary. (See *In re Rashad H., supra*, 78 Cal.App.4th at pp. 381-382.) Further, there is no risk the availability of stipulated reversal will reduce the incentive for pretrial settlement. To the contrary, the stipulated reversal will enhance the incentive for settlement because it provides an easy mechanism for the Agency and the parties to quickly dispose of appeals addressing only the issue of notice under the ICWA.

Finally, the Supreme Court has stated reversals are appropriate in circumstances where all parties agree circumstances occurring after the judgment render the child unadoptable. (*In re Elise K.* (1982) 33 Cal.3d 138, 139; *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414, fn. 11.) Because all parties here agree reversal is appropriate, we reverse the order.

DISPOSITION

The order declaring Barbara is a dependent and removing her from Vanessa's custody is reversed. This matter is remanded to the juvenile court for that court to direct the Agency to provide notice to the BIA and any appropriate tribes of the proceedings. If, after receiving notice, no tribe intervenes, the juvenile court shall reinstate its order. (*Dwayne P. v. Superior Court, supra*, 103 Cal.App.4th at p. 261.) The remittitur is to issue forthwith. (Cal. Rules of Court, rule 26(c)(1).)

BENKE, Acting P. J.

WE CONCUR:

NARES, J.

IRION, J.